

**RUMSON PLANNING BOARD  
NOVEMBER 3, 2014  
MINUTES**

Chairman Lospinuso called the reorganization meeting to order at 7:30 p.m. with the Pledge of Allegiance.

The Roll was called with the following members present: Lospinuso, Clark, Rubin, Williams, Casazza, Baret. Also present: Michael Steib (Board Attorney), Fred Andre (Zoning Officer), Tom Neff (T&M Assoc.), State Shorthand Services.

**Approval of Minutes**

Mr. Casazza moved to adopt the minutes from the October meeting, with corrections, and Councilman Rubin seconded.

Roll Call Vote: Ayes – Lospinuso, Clark, Rubin, Williams, Casazza, Baret, Shanley

Nays - None

Motion carried.

**Resolutions**

1. **West End-KB LLC, 59 West River Road** – Mr. Steib presented the resolution approving the application for a minor subdivision. Mr. Casazza moved to adopt the resolution, and Mr. Shanley seconded.

Roll Call Vote: Ayes (Eligible) – Lospinuso, Rubin, Casazza, Baret, Clark, Shanley, Williams

Nays – None

Motion carried.

**Mercy Trust, 138 Bingham Ave. (Continued Application)**

Brooks Von Arx, attorney, appeared on behalf of the continued minor subdivision application. He reviewed the testimony from the last hearing, noting that a straw poll taken at that meeting approved the plan, with the condition that the flag-pole area be reduced. Their revised plan now shows that reduced access area, and conditional approval has been received from the Monmouth County Planning Board. Mr. Steib noted that the revised plan, marked A-8 and dated 10/7/14, has been received by the Board.

Chairman Lospinuso said it appears the Board's concerns and suggestions have been incorporated into the revised plans, and he recalled that the Board thought this was the best option for the property.

There were no additional questions or comments from the public.

Mr. Casazza thanked Mr. Von Arx for his patience with the Board on this application, and Mr. Von Arx said his client appreciates the Board's comments.

Councilman Rubin moved to approve the revised application, and Mr. Casazza seconded.

Roll Call Vote: Ayes (Eligible) – Lospinuso, Rubin, Casazza, Clark, Shanley, Williams

Nays – None

Abstain - Baret

Motion carried.

**David Britz, 14 Robin Road, Minor Subdivision Application**

Rick Brodsky, attorney, appeared on behalf of the applicant. Tom Neff, T&M Assoc., stated there are a number of completeness issues that need waivers, and he has no objections to granting the waivers, which he proceeded to identify from his report. Councilman Rubin moved to grant the waivers and deem the application complete, and Mr. Shanley seconded.

Roll Call Vote: Ayes – Lospinuso, Rubin, Casazza, Clark, Shanley, Williams, Baret

Nays – None

Motion carried.

Mr. Steib reported that the following exhibits have been received:

- A-1 Application
- A-2 Minor Subdivision Plan, dated 7/30/14, revised 10/16/14
- A-3 Completeness report from T&M Assoc., dated 10/9/14
- A-4 Second completeness review dated 10/21/14, revised 10/27/14

Mr. Brodsky stated that the application seeks minor subdivision approval to subdivide the existing, oversized lot into two lots. No new variances will be created. The only variances included are existing and pertain to existing accessory structures on Lot 6.02. These are not affected by this subdivision application.

The minimum lot size for the zone is 10,000 sq. ft., and they are proposing:

- Lot 6.02 16,939 sq. ft.
- Lot 6.01 13,177 sq. ft.

The applicants live on the property and intend to remain in the existing home with no proposed changes. Upon approval of this application, they will sell the newly-formed vacant lot for development by a local builder.

At this time, Mr. & Mrs. Britz were sworn in, along with their engineer, Charles Surmonte, who prepared the plan. The Board accepted Mr. Surmonte's qualifications as a licensed engineer in the State of New Jersey.

Mr. Surmonte explained their plan for a subdivision at the north end of Robin Road. The property is approximately 30,000 sq. ft., with a depth of 200' and a width of greater than 200'. Most of the existing improvements are on the west end of the property, and the new lot line preserves the existing structure on Lot 6.02 and also provides a compliant new Lot 6.01, with a generous building envelope. They would provide a 63' circle – over that required under the ordinance and large enough to be developed in accordance with the rest of the neighborhood.

The property slopes from left to right. They have done soil borings and tested the soil, finding it has a deep water table, allowing them to design a storm water management system without any difficulty. Mr. Britz has no development plans at present; however, he does show a potential building footprint on the revised plan to demonstrate a proper development scheme for the property. The location of the proposed driveway is dictated by a large Red Oak tree on the proposed lot. They have placed the driveway to the right of this tree. There are also a few other trees in the building footprint that would need to be removed. None of these trees are specimen trees under the current ordinance. As a condition of the application, the applicant would comply with the local tree ordinance requirements.

The accessory structures on Lot 6.02 are existing with nonconforming conditions (2 free-standing sheds on the lot). The proposed subdivision proposes no variances.

Mr. Surmonte has reviewed the letter from T&M and stated they will comply with all the items in the report. The traffic circulation and impact associated with the additional single-family dwelling was found to be very minimal, according to Mr. Surmonte, and Mr. Neff agreed.

Ms. Baret asked about the proposed location for the driveway and the sight distance mentioned in the T&M letter. Mr. Surmonte said that the lot would support a detached garage, and the borough does encourage this. Chairman Lospinuso thinks the issue is the existing island in the area. Mr. Neff explained that the sight distance refers to the sight coming out of the driveway, and he thinks the plan is sufficient.

Chairman Lospinuso questioned the size home that would be allowed on the new lot. Mr. Surmonte stated that the existing home is 2,000 sq. ft., and the lot could support up to a 2,300 sq. ft. home, based on the size of the lot. Mr. Andre noted the cap in this zone is 3,500 sq. ft. (3,630 maximum, with the detached garage credit).

Mr. Surmonte responded to questions regarding the water table, which is deep enough to provide a basement.

Chairman Lospinuso asked about the existing shed and pergola on the existing lot, and Mr. Surmonte said there is no permanent floor, and it is an open structure. There was a permit for the shed, but not for the pergola structure.

Mr. Surmonte does not know the exact location for the utilities as yet, and a minor easement may be required to provide them to the new lot.

The new lot will conform to the lot size with no variances, except for the accessory shed setback and the pergola structure. Also, the existing driveway is within 1' of the property line. The frontages are compliant and provide conforming lots.

Bill Herrlich, 10 Robin Road, was sworn in and asked about the soil borings and whether there were any past borings, as this has been a very dry year. He is concerned that a new foundation may cause water problems on his property, since he is on the downward slope of this property. His basement does not get water, but he is concerned this might change. Mr. Surmonte said soil indicators tell where the high water table occurs and where it has peaked. Their tests show it was below 8', and he explained how construction would occur with a basement. Mr. Brodsky noted that when construction does occur, a drainage plan will need to be reviewed and approved, and Mr. Surmonte confirmed that Rumson has a very strict storm water management requirement.

Dale Connone, 7 Blossom Road, was sworn in and said he has much privacy at present, and he feels this new plan will affect this. Mr. Surmonte said there is very good screening at present, and the property-owner could be asked to maintain this.

Ms. Baret asked if he found any evidence of an underground spring, and Mr. Surmonte said they did not find any with their testing.

Margaret Sellig, 2 Robin Road, was sworn in and asked for clarification that they would be providing two conforming lots, and Mr. Steib said if they did not conform, they would need to come back before the Zoning Board for a variance. Mrs. Sellig also asked about the Red Oak tree, stating she wants to make sure that this tree will be preserved. She expressed her opinion that things are getting very tight in the area.

David Britz stated he has owned the property since 1984. He lives in the existing home on the property. He described the situation with the shed mentioned earlier, and a photo of the shed and pergola were marked A-5. He stated that the shed was submitted for approval in 1990, and he showed the board the original survey and position of the shed that was approved. The shed is actually an observatory with a roof that opens to allow a person to look at the sky. Another photo (A-6) shows a view of the original, permitted shed, which is 12' x 12' in size. The framing for the pergola allowed the roof to open. Exhibit A-6 also shows the trees behind the shed on the property line, providing screening from the shed. The roof of the shed rolls towards the property line when it opens. It is still in use at this time. Mr. Britz noted he has been an amateur astronomer for 50 years. The structure was built initially by him, and another photo was marked A-7 showing the roof portion of the structure that opens to allow the sky view; however, an extended view of the sky was limited, so he added another 5' to fully reveal the sky. Since the initial structure was approved, he did not think this framing addition needed a permit, and he apologized to the town for this mistake on his part.

Mr. Brodsky asked Mr. Britz if he could move the structure to meet the requirements of the ordinance. Mr. Britz stated that the original structure had a 4' foundation, which would be a major task to move. He would ask for permission to leave the frame structure as is, since it would make his work very difficult to complete and would set him back six months. The small shed is not on a permanent foundation. The subdivision does not affect the variances for the existing structure.

Mr. Brodsky asked about the existing growth along the rear property line, and Mr. Britz said he has no plan to disturb any of this vegetation, although he could not speak for any future owner.

Mr. Neff clarified that if they intend on not planting the two additional street trees, he would need a waiver for this also. Mr. Brodsky noted it may be difficult to provide these, due to the existing trees in this area. They would request this waiver, since there are already trees on the existing property.

Keith Mazurek, 9 Blossom Road to the north of this property, was sworn in and asked about the observatory and whether it was conforming when it was created, and Mr. Britz said it was. Mr. Mazurek commented that he has been at his property since 1992 and built a larger home during that time. He asked if a subdivision approval could include landscaping as a consideration. Mr. Neff said typically there is no requirement for a minor subdivision, although Chairman Lospinuso said the board sometimes does ask for this as a condition to provide buffer. Mr. Steib said that unless there is some extenuating factors as to the relief sought, they could require some screening buffer. Chairman Lospinuso noted a fair amount of existing screening between the lots.

Ingeborg Perndorfer, 6 Robin Road, was sworn in and commented on the slope and water table, noting she has had water in her basement in the past. She has been told there are underground streams in the area, and stated that after the property across the street was developed, her basement filled with water, eventually causing them to end up with a crawl space. She has a sump pump that runs a lot, and she thinks since all the development in the neighborhood, the problem has gotten worse. She thinks there is a tremendous water issue in the neighborhood. She also said that since the area has redeveloped and changed, more water has been coming down Robin Road, and she has had water running into her garage

when it rains. This did not happen when she first moved in, and she attributes it to the extensive development in the area. Councilman Rubin noted that Rumson requires grading plans so that these problems do not occur, and they are very cognizant of the issue.

Ms. Perndorfer said she is against the application, and she also is concerned with additional traffic, as the area is extremely tight. She does not think another structure will add to the beauty of the neighborhood and will take away from the property values.

Additional comments were heard regarding the utilities and whether the town could guaranty that this development will not overtax the sewer system. It was noted that this question should be directed to Mayor and Council, as it was not an issue for this Board. Construction traffic and emergency access issues were also addressed.

Kathryn Meredith, 6 Blossom Road, was sworn in and asked about the required frontage, and Mr. Brodsky answered her question. She also commented on the water rushing down the street after a storm and the water problems that are getting worse, due to the overbuilding in the area. Chairman Lospinuso asked her if the water runoff issue would be from this application, and she said it was not. She clarified that no new variances are required to subdivide the property. Mr. Steib noted that they are creating a new lot with no variance, but technical variances would be needed for the existing setback for the sheds. Ms. Meredith expressed her opposition to the application.

Mr. Connone spoke again to say he is also opposed to the application.

There were no other questions or comments from the public.

Mrs. Williams asked about the property line and the slight jog proposed. Mr. Surmonte said they did this to preserve a Magnolia tree in Mr. Britz' yard. If the property line were straightened out, the tree would go on to the new lot. It would not create a nonconformity, and they feel their proposal is the best for the property. Mrs. Williams thinks it is odd to have a line that is turned. Mr. Surmonte thinks their plan is better for the cul-de-sac.

Chairman Lospinuso expressed concern with the abstractness of the application and the lack of detail presented, including landscaping, buffer, driveway, etc. He understands that this is not required for this application. He agrees with the concerns regarding traffic and egress. The Tree Preservation Committee's work is important. He would like to see a more detailed plan of what could be here, which may allay some of the fears and concerns heard this evening.

Mr. Britz said his intent is to sell a piece of land. He has no intention of building, but only intends to sell. Any future owner that intends to build would have the responsibility of presenting these details. Chairman Lospinuso noted that they would generally not come before this Board. It was again explained that the size and location of the proposed lot are conforming.

Councilman Rubin thinks they can provide a good subdivision with good drainage, and the owner has a right to the subdivision.

Mr. Mazurek again spoke to clarify that if the subdivision is approved, the vacant lot would be a conforming building lot and whoever buys it and files for a building permit would not need any approval, if it conforms to all zoning requirements, subject to approval of grading plans, etc.

Mr. Herrlich asked why a subdivision was denied previously, and Mr. Steib asked when that occurred. Mr. Britz said he has never gone before the Board before for a subdivision application. The previous owner did ask for and receive approval, and Mr. Steib clarified that that applicant purchased the property in 1984. Upon further research, it was discovered that an application was presented and approved in 1981 for a two-lot subdivision, but an objecting neighbor sued, and this was settled in court, with the applicant withdrawing his application without prejudice, leaving any subsequent property owner the option to submit another application. This has no impact on this application, according to Mr. Steib.

Mr. Brodsky noted that many neighbors have raised concerns, which were not caused by this application. He commented on the issues of overbuilding and how it pertains to the current ordinance, lot size, etc. noting that the proposed lots are larger than the minimum lot size required. No variances are proposed with regard to the new lot. The property can handle at least two homes, based on the current ordinance. Concerns and frustrations heard with regard to the area in general should not be taken out on this applicant or application, which is not fair to him, since he can comply with all zoning laws. They have heard from one of the neighbors regarding steps taken to address drainage problems on her lot, and any building on this new lot would also be required to take steps, as required, which can sometimes make the conditions better. Any new house would need to comply and not be built in excess of the permitted building envelope. The sheds have special value to the applicant and community. He asked the Board to apply the law fairly as it applies to the zoning ordinance

Mrs. Williams asked if the Board approved the subdivision, would they also be approving the shed variance, and Mr. Steib said this was not necessarily true, although the application has been presented as a package. It was noted that none of the neighbors' comments mentioned this request as a negative aspect of the application.

Mr. Casazza expressed a problem in that the Board does not require a landscape plan at this time, and this would be a matter for Mayor and council and a possible ordinance change.

Mr. Neff commented on the sewer issue, and Mr. Steib said this is usually heard in the context of a larger development. The applicant is only responsible to the extent they are creating and do not need to correct the issue for everybody.

Mr. Casazza stated that the application does not require any variances, and the homeowner is allowed to subdivide his property that meets all requirements under the zoning ordinance.

Mr. Clark noted two other cul-de-sacs in the area similar to this one.

Mr. Shanley said he would approve it, as it meets all requirements under the zoning ordinance. Comments from the public regarding other subdivisions and the water problems involved is an issue for the town to look at for the future. The Board has heard them before, and they are being addressed currently, as the Master Plan is being reviewed.

Ms. Baret agreed that they are presenting a conforming application as per the town's ordinance. The neighbors will be able to look at any future storm water management plans, drainage, etc. at the time of any future building.

Mrs. Williams commented again on the jog in the property line, stating she would prefer to see a straight line.

Chairman Lospinuso understands that the application is conforming, although he would prefer to see more details, and it is important to heed the concerns of the neighbors.

Councilman Rubin moved to approve the application, and Mr. Casazza seconded.

Roll Call Vote: Ayes – Lospinuso, Rubin, Casazza, Clark, Shanley, Williams, Baret

Nays – None

Motion carried.

**Consistency Review Proposed Ordinance Amendments to Chapter XXXII Development Regulations**

Mr. Steib noted this is a clean-up ordinance, which clarifies some amendments. Ms. Baret moved to find that they are consistent with the Master Plan, and Mr. Shanley seconded. Voice Vote: Ayes, unanimous.

**Executive Session**

At this time, the Board moved into executive session to discuss matters of ongoing litigation.

At the end of this session, Mr. Andre reviewed upcoming applications for the December meeting.

The next meeting will be **Monday, December 1, 2014.**

There being no other business, motion was made and seconded to adjourn. Voice Vote: ayes, unanimous. The meeting was adjourned at 9:50 p.m.

Respectfully submitted,

Patricia Murphy  
Clerk